IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 301 OF 1996

Union of India ..Appellants

versus

M/s. Jayantilal & Co. ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohanrao for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST APRIL,2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This Appeal is filed by the Union of India against the judgment and decree of the Tribunal. Only one submission was made by Mr. Samant that the appellant who were respondent before the Tribunal had filed three affidavits in evidence but they came to be filed at the late stage. Only on that count the Tribunal did not consider them. In the judgment Tribunal has observed and noted that the Respondents i.e. present appellants has not filed any affidavit but in this case after the case was posted for arguments on 20.12.1991. Arguments were heard and

then respondents filed three affidavits along with the application to receive affidavits in evidence. This application was opposed to by the applicant. The Tribunal observed that there were no bonafides on the part of the respondents to file affidavits so late and therefore the affidavits were not considered.

3. It may be true that the affidavits were filed after the arguments were over and there was delay to file affidavits. But if the affidavits were taken on record, the tribunal was bound to consider it; that has not been done resulting in serious miscarriage of justice, so on this ground alone the matter is required to be remanded. Hence, order :

ORDER

. The impugned order is set aside.

. The matter is remanded to the Tribunal. The Tribunal will decide the claim on the basis of the evidence already on record and will consider all the affidavits and documents and hear the Advocates for the parties and decide the suit or claim within three months from the date of receipt of this order. R & P if received the same be sent back immediately. Both the parties will be at liberty to adduce further evidence, if any. No order as to costs.

1.04.2005 (D.G. DESHPANDE, J.)